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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,606	08/16/2001	Ullrich Thiedig	64251-030	3007

7590

01/06/2004

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EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 01/06/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,606

Applicant(s)

THIEDIG ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6 and 14-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6 and 14-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See *Continuation Sheet*.

Continuation of Attachment(s) 6). Other: As to boxes 12 and 14 above, applicant attention is directed to the office action for clarification.

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DETAILED ACTION

1. This office action is in response to applicant's amendment filed 10/20/03, wherein claims 6 and 15-19 were amended; and claims 20-30 were added.

Oath/Declaration

2. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Germany on 2/16/99. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

Applicant's attention is also directed to 37 CFR 1.55. If the application being examined is an original application filed under 35 U.S.C. 111(a) (other than a design application) on or after November 29, 2000, the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. See 37 CFR 1.55(a)(1)(i). If a claim for foreign priority is presented after the time period set forth in 37 CFR 1.55(a)(1), the claim may be accepted if the claim properly identifies the prior foreign application and is accompanied by a grantable petition to accept an unintentionally delayed claim for priority. See 37 CFR 1.55(c).

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Priority

3. It should be noted that for the purposes of this office action the effective filing date is 2/15/00 not 2/16/99 in light of the above, because a proper claim for priority has not been met. It appears that application intended to have priority to the Germany document 19906021.5; however, the declaration refers to priority under 119 by naming the PCT application. This is incorrect; the instant application already has priority to the PCT under 35 U.S.C 120 because it is a continuation. The declaration should have had the identification number of the priority document for priority under 35 USC 119.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6, 14-19 and 26-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the expressions "the surroundings" and "the measured face" do not appear to have clear antecedent basis. Shouldn't the expression "the surroundings" be "the surrounding environment" or are these not the same "surroundings". The expression "the measured face area" does not have antecedent basis but "the detected face area" could have antecedent basis because of the phrase set forth on line 4, "an optical detection device for determining the face ..." includes the verb "detection". Likewise, the expression "the determined face area" would appear to have antecedent basis because the above phrase uses the verb "determining".

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In claim 26, the phrases "the opening" (lines 7 and 10) and "the aperture" lack clear antecedent basis. The expression "the opening" is set forth on line 3 as "... frame ... to form an opening for guiding the comestible body..." and then referred to on line 5 as "the opening receiving ... at the distal end". Therefore, there is not an opening set forth on the proximate end of the frame as implied on lines 7 and 10. As to the expression "the aperture" also refers to same opening at the proximate end that has not clearly been set forth.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 14-15, 18 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cresson et al., U.S. patent 5,129,298, in view of Van Devanter et al., U.S. Patent 4,557,019, or Rudy et al., U.S. Patent 4,875,254.

Cresson discloses the invention substantially as claimed, including, e.g., a separating device (16); an advance device (1/2/3/4/25/6/7) for advancing the source towards the separating device; an optical detection device (9/13, see Figure 2) for determining the face area of the source body; a plurality of lamps (14, see Figure 2) for illuminating in a planar fashion along the longitudinal direction of the source such that the face and the surroundings of the face have an optical contrast; and wherein the optical detection device determines the area of the face by means of the said optical

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contrast and wherein the source body is advanced as a function of the measured face area.

Cresson lacks the tunnel for guiding the source body, wherein the tunnel includes an end adjacent the separating device and means for mounting the lamps in the tunnel. However, Rudy et al. and Van Devanter et al. both disclose that it is old and well known in the art to use tunnels for guide source bodies that include lamps mounting within and located adjacent cutting device for the purpose of minimizing the entrance of ambient light into the optical monitoring area such that the ambient light does not interfere with the optical equipment thereby increasing the accuracy of cut slices. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a tunnel with lamps mounted within and adjacent the cutting device in order to guide the source body based upon more accurate optical monitoring.

As to claim 14, the modified device of Cresson discloses, e.g., a tunnel made out of reflective material because the slot (84, see Rudy et al.) would not be necessary if the light did not reflect inside the chamber 76. In the alternative, even if it is argued that the modified device of Cresson lacks the reflective material for the tunnel, the examiner takes official notice that it is old and well known in the art to use reflective material within lighted tunnels or enclosures for the purpose of increasing the light intensity within the tunnel or enclosure by preventing the walls of the tunnel or enclosure from absorbing the light. Therefore, it would have been obvious to one of ordinary skill in the art to use reflective material in the tunnel for the purpose of ensuring more light is directed to the work instead of being absorbed by the tunnel.

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As to claim 15, the modified device of Cresson discloses a tunnel with a first region (the area closest to the cutter) in which the lamps deliver diffuse radiation with an intensity which is reduced towards the face because Cresson, Rudy et al. and Van Devanter et al. all discloses lamps on opposite sides of the separating device. Therefore, the light is at its most intense closer to the light and less near the separating device.

As to claim 18, the modified device of Cresson discloses the need of having a lamp that directed shines on the advancing device (see Figure 2, the center lamp shines directly on the advancing portion (6).

As to claim 20, the modified device of Cresson discloses invention substantially as claimed as set forth above and further includes the use of a control (20) for advancing the body a distance as a function of the are of the face.

As to claim 21, the modified device of Cresson discloses the use of a camera (13).

As to claim 22, the modified device of Cresson discloses the use of a hold down device (7).

As to claim 23, the modified device of Cresson discloses a means (the center light or either side lamp as shown in Figure 2) that is capable of illuminating the hold down device so there is no shadow and does not appear as part of the face.

As to claim 24, the modified device of Cresson discloses the need to have the separating device, advance device and light frame all inclined at approximately forty five degrees (see Figure 1).

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As to claim 25, the modified device of Cresson discloses a camera at a substantially flat angle (flat relative to the separating device).

As to claim 26, the modified device of Cresson discloses the invention substantially as claimed as set forth above and further includes a camera (13) and a movable separating device intermediate the camera the lighting frame, as well as a detection device (20).

As to claims 27-28, the modified device of Cresson discloses the separating device, the advancing device and light frame all at an inclined angle at approximately forth five degrees (see Figure 1).

As to claim 29, the modified device of Cresson discloses the camera at a substantially flat angle (flat relative to the separating device).

As to claim 30, the modified device of Cresson discloses the use of a hold down device (7).

Allowable Subject Matter

8. Claims 16, 17, and 19 appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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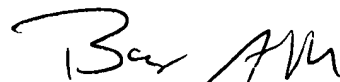
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
Wednesday, December 31, 2003